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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1961

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No. 475

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ROBERT ELMER GALLEGOS, Petitioner,

vs.

THE PEOPLE OF THE STATE OF COLORADO,
Respondent.

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EN BANC — JUDGMENT REVERSED

MR. JUSTICE DOUGLAS delivered the opinion of the Court

## PETITION FOR REHEARING

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## PETITION FOR REHEARING

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To the Honorable the Chief Justice and the Associate Justices of the United States Supreme Court:

### INTRODUCTION

The State of Colorado's position on this matter is so completely and forcefully outlined in the separate and presently dissenting opinion authored by Mr. Justice Clark that it would be an injustice to try to improve upon the wording found therein. Therefore, the major portions of this Petition for Rehearing will be formulated by quoting the most pertinent parts of that opinion in answer to certain propositions advanced in the majority opinion.

## ARGUMENT

### I. THIS COURT'S INNUENDO THAT PETITIONER'S EARLY CONFESSIONS IMMEDIATELY AFTER HIS ARREST WERE ACQUIRED "IN CALLOUS DISREGARD OF THIS BOY'S CONSTITUTIONAL RIGHTS" IS NOT SUPPORTED BY THE RELEVANT FACTS OR LAW.

It must be first noted that these confessions included "spontaneous oral admissions made by petitioner at the time of his arrest on January 1, as well as a detailed confession made the next day, all long before the formal confession was given five days later. * * *" "In regard to the confessions, the test of voluntariness as evidenced by the 'totality of the circumstances' leads the Court not to question them. Here there were no 'secret inquisitorial processes, or compulsion of any kind . . .' The Court's only criticism is that petitioner 'would have no way of knowing what the consequences of his confession were without advice as to his rights. . . .' The truth of the matter is that the singular circumstance pointed out by the Court has never been thought to render a confession inadmissible. *See Culombe v. Connecticut*, 367 U. S. 568, 577-602 (1961) (opinion of Mr. Justice Frankfurter)."

## II. AN EXAMINATION OF THE "TOTALITY OF CIRCUMSTANCES" SURROUNDING THE TAKING OF THE FORMAL CONFESSION UPON WHICH THIS CONVICTION MAY HAVE RESTED DOES NOT SHOW THAT IT WAS OBTAINED IN VIOLATION OF DUE PROCESS.

"Petitioner freely admitted in testimony before the trial judge that he was not threatened or physically coerced in any way and that he was not intensively questioned. Moreover, prior to the formal confession he was told that he did not have to make a statement and warned of the possibility of a murder charge, as well as informed that he could have an attorney and his parents present..."

"Petitioner was never placed in solitary confinement. . . ."

"Nor was petitioner 'cut off' from contact with lawyers or adults and 'made accessible only to the police.' His mother made no effort to obtain an attorney although informed of the right to do so. And she was not prevented from seeing him but merely asked to comply with reasonable visiting regulations. . . . petitioner himself passed up the offer to confer with his parents and an attorney before making this confession.

"In support of the above factors indicating that the confession of January 7 was voluntary is the undeniable fact that petitioner admitted on January 1 his participation in the assault and confessed in detail thereto on January 2. * * * (It is difficult) to understand how one could conclude that the police found it expedient to coerce the

January 7 confession or that the events discussed by the Court rendered it involuntary when five days earlier a substantially identical confession was made in the absence of the 'coercive' events."

## CONCLUSION

It seems regrettable "that without support from prior cases and on the basis of inference and conjecture not supported in the record the Court upsets this conviction."

## CERTIFICATE

It is hereby certified that this petition is presented in good faith and not for the purpose of delay.

Respectfully submitted,

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